



PATENT  
20020/10012

TFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant:**

FISCHBACH, et al.

Serial No.: 10/728,403

For: METHODS AND  
APPARATUS TO LOCK A  
DUST COVER IN A FIREARM  
HOUSING

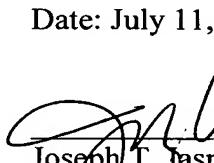
Filed: December 5, 2003

Group Art Unit: 3641

Examiner: L. Semunegus

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

Date: July 11, 2005

  
Joseph T. Jasper  
Reg. No. 00,833

Joseph T. Jasper  
Reg. No. 50,833

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**SUPPLEMENTAL RESPONSE TO THE OFFICE ACTION DATED  
DECEMBER 2, 2004**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Further to the amendment filed on June 2, 2005, enclosed is a Rule 132 Declaration by Franz Beer. The Rule 132 declaration provides further evidentiary support for the arguments presented in the June 2, 2005 submission.

Respectfully submitted,  
HANLEY, FLIGHT & ZIMMERMAN, LLC.  
20 North Wacker Drive, Suite 4220  
Chicago, Illinois 60606  
(312) 580-1020

By:

Joseph T. Jasper  
Registration No. 50,833

July 11, 2005



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HOUSING ) Box 1450, Alexandria, VA 22313-  
 ) 1450 on this date:  
Date: \_\_\_\_\_  
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Filed: December 5, 2003 )  
 )  
Group Art Unit: 3641 ) James A. Flight  
 )  
Examiner: L. Semunegus )

RULE 132 DECLARATION

Mail Stop Amendment  
Commissioner for Patents  
P.O.Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Dipl.-Ing. Franz Beer, hereby declare and  
state:

1. I am mechanical engineer and was Officer of the German Army. I worked in the region of arms and armament in the Sportwaffenfabrik Reck, Hersbruck and the MAN AG, factory Munich. I am consultant for e.g. Heckler & Koch. As such, I am a person of at least ordinary skill in the art.

2. It has been known to use pivotable dust covers on firearms to cover the shell discharge opening of the housing for more than 50 years. For example, the well known German

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machine carbine 42 (the "Sturmgewehr"), which has been known since 1941, employed such a dust cover.

3. Further, these types of dust covers, including the duct cover employed in the Sturmgewehr, opened in response to movement of the breech. Persons of ordinary skill in the art have, thus, known and understood this common mechanism by which a moving breech forced a dust cover to the open position to facilitate discharge of a spent cartridge casing for more than 50 years. Such mechanisms are, thus, common knowledge to persons of ordinary skill in the art.

4. I am advised that the USPTO has taken the position that it would be obvious to a person of ordinary skill in the art to utilize a magnetic lock to secure a dust cover of a firearm in a closed position in view of the teachings of Murello, U.S. Patent 6,523,293, Swink, U.S. Patent 4,753,495, and/or Su, U.S. Patent 6,550,298. I have reviewed the Murello, Swink and Su patents, and as a person of ordinary skill in the art, I do not agree that, absent reference to the teachings of the patent application at issue, the Murello, Swink and Su patents, whether taken alone or in combination, would teach or suggest the inclusion of a magnetic lock in a firearm to a person of ordinary skill in the art.

5. My belief is based on several factors. First, as noted above, dust covers of the type at issue have been known since at least 1941. Magnetic locks in appliances such as the Swink disclosure have been known for at least a similar length of time. However, despite the availability of this knowledge

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for over 50 years, no person has combined these features to utilize a magnetic lock in a firearm.

6. One reason for this failure is the fact that the furniture/cabinetry arts are not analogous to the firearm arts. A person of ordinary skill in the art would never look to the furniture/cabinetry arts for teachings on how to construct a firearm.

7. Another reason for this failure is that magnetic locks must be manufactured within relatively tight tolerances. If the magnetic lock components are not properly aligned, the magnetic force will be insufficient for holding the dust cover shut. Thus, the holding force of the magnetic lock must be large to ensure that, even in the case of misalignment, the lock will function. As a result, the breech must apply a significant force to overcome the magnetic lock and open the dust cover. The requirement of such a force raises the possibility of a breech jam, particularly in the case of lower caliber weapons.

8. In view of the above issues, when I spoke to a small arm specialist, Mr. Hujer, Sauerlach, am Grafinger Steig 2, about the magnetic lock for the dust cover. Mr. Hujer replied "It will not work." Mr. Hujer is educated as a mechanic, but built up an enormous knowledge concerning small arms. He worked as a consultant for gun firms but he is now retired. He is, thus, a person of at least ordinary skill in the art.

9. I understand that willful false statements and the like are punishable by fine and/or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that any

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such willful false statement may jeopardize the validity of  
this application and any patent resulting therefrom.

Date: 28. 06. 05

By: 

Franz Beer